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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 23rd July 2025

S.R.O. No. 569/2025—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 30th June 2025 passed in the ID Case No. 01 of 2023 [2-A(2)] passed by the Presiding Officer, Industrial Tribunal, Bhubaneswar on the industrial dispute between the management of M/s Stride Hospital Pvt. Ltd. (represented through its Managing Director) At Flat No. 404, Mahaveer Enclave, Laxmisagar, Bhubaneswar, Dist. Khordha and Shri Sudhanshu Sekhar Mohanty, S/o Lal Bihari Mohanty, N6-210, IRC Village, P.O./P.S. Nayapalli, Bhubaneswar, Dist. Khordha is hereby published as in the schedule below :—

SCHEDULE

BEFORE THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 01 of 2023 [under section 2-A (2) of the ID Act]

Dated the 30th June 2025

Present :

Shri Benudhar Patra, LL.M.,
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of M/s Stride Hospital Pvt. Ltd., . . First Party
(repesented through its Managing Director),
At. Flat No. 404, Mahaveer Enclave,
Laxmisagar, Bhubaneswar, Dist. Khordha.

And

Shri Sudhanshu Sekhar Mohanty, . . Second Party
S/o Lal Bihari Mohanty,
N6-210, IRC Village,
P.O./P.S. Nayapalli,
Bhubaneswar, Dist. Khordha.

Appearances :

Shri Kirti Chandra Nayak, Adv.	. .	For the First Party
Shri Lalit Mohan Nanda, Adv.	. .	For the Second Party

AWARD

The instant proceeding arises out of an application preferred by the second party under Section 2-A (2) of the Industrial Dispute Act, 1947, (for short the Act) challenging termination of his service with effect from the 28th February 2022 as illegal and unjustified with a prayer for his reinstatement in service and consequential service benefits with arrear wages from the 1st September 2018 to the 28th February 2022. The application reveals that earlier the second party had put forth his grievance before the Labour Machinery on the 19th September 2022, but as there could not be a settlement of his grievance within the stipulated period of 45 days, he approached this Tribunal by invoking the provisions of Section 2-A (2) of the Act.

2. The case of the second party, in brief, is that on being selected by the first party he continued to work under it as the Chief Executive Officer from the 2nd February 2018 till the 28th February 2022, when without there being any reason or rhyme he was refused employment. According to the second party, while under the employement of the first party he was doing all sorts of clerical works as per the instruction of the Board of Directors and throughout was discharging his duty flawlessly and that too continuously for a period of more than 240 days preceding the date of his termination. The second party alleges that prior to effecting termination of his service neither the management served upon him any explanation nor conducted any enquiry for any lapse on his part. In the above background claiming his termination to be in gross violation of the provisions of Section 25-F, G and H, the second party has prayed for the relief of reinstatement in service with all consequential service benefits and arrear wages.

3. Contesting the claim the first party filed its Written Statements stating therein *inter alia,* that the second party was never selected/posted as the Chief Executive Officer, nor has he rendered any service to the first party and as such there exists no employer- employee relationship between it and the second party. Stating about the background facts, it is asserted in the written statement that in fact the wife of the second party Mrs. Jyoti Mohanty was one of the Directors of the first party from the 7th February 2018 to the 13th July 2021 and taking advantage of his wife's position, at times the second party used to come to the office of the first party on behalf of his wife and was causing disturbances in the operation and management of the Hospital. Disputing the cash vouchers annexed to the statement of claim, it is stated that no such payment was ever made by the first party to the second party towards his monthly remuneration. According to the first party, the claim laid on behalf of the second party is nothing but imaginary one, as such deserves to be rejected with exemplary cost to the first party.

4. On consideration of the pleadings, the Tribunal framed the following issues for determination :—

ISSUES

(i) Whether the case is maintainable?

(ii) Whether Shri Sudhanshu Sekhar Mohanty is workman as defined under Section 2 (s) of the I.D. Act, 1947?

(iii) Whether the action of the management of M/s Stride Hospital Pvt. Ltd., Mahaveer Enclave, Laxmisagar, Bhubaneswar in termination the services of Shri Sudhanshu Sekhar Mohanty with effect from the 1st March 2022 is legal and/or justified?

(iv) If not, what relief the workman Shri Mohanty is entiteld to?

5. To substantiate their respective stand, while the second party examined himself as WW No. 1 and relied on documents which have been marked Ext. 1 to 14, the first party examined its Managing Director as MW No. 1 and placed reliance on Ext. A, photocopy of lawyer's notice, dated the 21st March 2021 and Ext. B, photocopy of the communication addressed to the Registrar of Companies-*cum*-OL, Odisha. As it reveals from record, upon closure of evidence from the side of the second party, the case was posted for evidence of the management but the second party remained content thereafter and did not participate while evidence from the side of the management was recorded, accordingly on closure of evidence from the side of the management the case was posted for Award after hearing of argument.

FINDINGS

6. *Issue No. (i) & (ii) :*—Both the issues are taken up for consideration together, as the first party challenges maintainability of the application on the ground that the second party is not a 'workman' within the meaning of Section 2 (s) of the Act, and moreover there subsists no employer and employee relationship between it and the second party.

Before entering into any discussion on the point of maintainability of the proceeding as pointed out by the first party, it is profitable to refer to the guiding principles set out by the Hon'ble Apex Court to decide the status of a person to be a 'workman' within the meaning of Section 2 (s) of the Act and so also to arrive at a finding on the employer-employee relationship between the parties.

As per the settled principles of law, the determinative factor for "workman" covered under Section 2 (s) of the I.D. Act, is the principal duties and functions performed by an employee in the establishment and not merely the designation of his post. Further, the onus of proving the nature of employment rests on the person claiming to be a "workman" within the definition of Section 2 (s) of the I.D. Act. A reference in this context be made to the judgment of the Hon'ble Apex Court in the case of Lenin Kumar Ray *Vs.* M/s Express Publications (Madurai) [2024 INSC 802]. Similarly, in order to arrive at a conclusion on the employer-employee relationship, between the parties, it is

the settled proposition of law that in case the management denies the existence of employer-employee relationship, the burden of proving the existence of such a relationship primarily rests upon the person asserting the same. It is for the person asserting himself to be an employee of the management, to discharge the initial burden by leading positive evidence, to show himself to be an employee of the management, and it is only thereafter that the onus would shift to the management to counter the same. It is not for the management to prove that the claimant is not its employee.

Keeping an eye over the above settled proposition of law, now it is to be scrutinized on the basis of documents available on record as to how far the second party is able to establish that he was a 'workman' under the first party and there being existed employer-employee relationship between them, he is entiteld to the relief (s) claimed owing to his illegal termination.

7. In the present case, there is no specific document adduced relating to the actual work and functions performed by the employee. The second party is also found to have admitted in Para. 10 of his cross-examination that no document is filed in support of his appointment under the first party. In the absence of any concrete material to demonstrate the nature of duties discharged by the employee, it is difficult on the part of this Tribunal to bring him within the purview of the definition of 'workman' as given in Section 2 (s) of the Act. Rather, the documents relied on by the second party i.e. Exts. 1 to 9 disclose his capacity to be a member of the Governing Body of the Sri Sri Borda Hospital & CHC, which runs under a Trust, namely, Sri Sri Parama Premamaya Purusottam Trust. Though the second party has laid much emphasis on Ext. 12 (marked with objection from the side of the first party) stating it to be his appointment letter, but a perusal of Clause-3 thereof indicates that he was authorized to make appointment of personnel in managerial level so also of the doctors, upon approval by the Governing Body. For better appreciation the said clause is reproduced below :—

> "(3) Managerial level and doctor's appointment in SSB Hospital will be done by the CEO as approved by the governing body. All other appointment will be done by CEO/HR head."

The first party, on the other hand, adduced evidence from its side through MW1, who has categorically stated in his evidence that the second party had never been appointed by the first party, nor was he paid any remuneration for discharging any duty under it. Objecting to the Identity Card, Ext. 10 and the vouchers marked Ext. 11 series to be fake documents created by the second party with a view to grab money, it is argued on behalf of the first party that since the identity card does not bear signature of the authority and payments shown under the vouchers Ext. 11 series are not representing the wages of the second party, no importance should be attached to those documents. Further, the Learned Counsel drew attention of the Tribunal to the evidence of MW No. 1, so also Ext. 13, the alleged complaint, dated the 16th September 2022 of the second party addressed to the DLO, Khurda, Bhubaneswar and Ext. 14, the lawyer's notice, dated the 21st March 2021 addressed to the first party and contended that the intention of the second party can well be visualized from the above documentary evidence that only with a view to grab illegal money from the first party the second party has dragged the management to fight out the present litigation wherein he has made a claim for his reinstatement with all benefits including the alleged arrear wages. The evidence of MW No. 1 adduced in this regard remained intact, not being controverted in any manner.

8. On an appraisal of the evidence as discussed above, the Tribunal inclines to hold that the second party has not only failed to establish that he was a 'workman' under the first party, but also failed in his attempt to convince the Tribunal that in fact there existed any employer and employee relationship between the first party and himself. That apart, there seems inconsistency in his claim before the DLO (Ext. 13) and in the instant application filed under Section 2-A (2) before this Tribunal, inasmuch as while in his complaint the second party had claimed for his arrear wages but uttered not a single word challenging his termination, in the application before this Tribunal, he put forth his grievance regarding his illegal termination and sought for appropriate relief (s).

9. In the background as above, the Tribunal is of the opinion that the second party has miserably failed to establish that his status under the first party was well within the purview of 'workman' and as such there existed employer-employee relationship between them. In absence of any positive evidence adduced by the second party substantiating the above stand, both the issues are answered in the negative as against the second party.

10. *Issue Nos. (iii) & (iv)* :—In the wake of the conclusions arrived at on issue Nos. (i) and (ii), the findings on issue Nos. (i) and (iv) have become redundant. But, for academic purpose when the record was verified by this Tribunal, it is found that there is absolutely no evidence tendered on behalf of the second party that prior to his alleged illegal termination he had rendered continuous service for 240 days under the first party so as to claim protection of the provisions of the Act. In absence of any evidence with regard to the second party's discharging continuous employment under the first party, which is a pre-condition to set into motion the provisions of Section 25-F of the Act, no relief can be granted to the second party, even if it is assumed for the sake of argument that his termination is illegal.

11. In any event therefore, the instant proceeding is found to be not maintainable before this forum.

The 2-A (2) application is disposed of accordingly.

Dictated and corrected by me.

BENUDHAR PATRA, LL.M.
30-06-2025
Presiding Officer
Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA, LL.M.
30-06-2025
Presiding Officer
Industrial Tribunal, Bhubaneswar

[No. 6675—LESI-IR-ID-0050/2025-LESI.]

By order of the Governor
MADHUMITA NAYAK
Special Secretary to Government

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